

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHAUNA ROSSINGTON, et al.,

Plaintiffs,

v.

MOUNTAIN CIRCLE FAMILY
SERVICES, INC., et al.,

Defendants.

No. 2:23-CV-0423-KJM-DMC

ORDER

Plaintiffs, who are proceeding pro se, bring this civil action. Pending before the Court are the following motions, noticed for various hearing dates before the undersigned in Redding, California:

- | | |
|-------------|---|
| ECF No. 6 | Defendant Mountain Circle Family Services, Inc.'s, motion to dismiss. Hearing originally noticed for April 19, 2023, and re-noticed for June 7, 2023. |
| ECF No. 8 | Defendant Robert Berry's motion to dismiss. Hearing noticed for April 19, 2023. |
| ECF No. 9 | Defendant Robert Berry's motion to strike. Hearing noticed for April 19, 2023. |
| ECF No. 11 | Plaintiffs' motion to remand. Hearing noticed for September 6, 2023. |
| ECF No. 12. | Plaintiffs' motion for leave to amend. Hearing noticed for April 19, 2023. |

ECF No. 16 Plaintiffs' motion to file an amended motion to remand.
Hearing noticed for April 19, 2023.

Also reflected on the Court's docket and filed subsequent to the above-referenced motions are: Plaintiffs' notice of voluntary dismissal of the entire action, ECF No. 31; and Defendant Berry's response thereto, ECF No. 32.

On April 4, 2023, the Court issued a minute order advising Plaintiffs that their motions at ECF Nos. 12 and 16 were defectively noticed. See ECF No. 17. Specifically, these motions were set for hearing less than 35 days after they were filed, in violation of Eastern District of California Local Rule 230. The minute order also vacated the hearing on Plaintiffs' initial motion to remand which was noticed for September 6, 2023. The Court instructed Plaintiffs to re-notice the defectively noticed motions. Thereafter, Plaintiffs filed a notice of voluntary dismissal. See ECF No. 31.

The Court first addresses Plaintiffs' notice of voluntary dismissal. In their notice, Plaintiffs seek dismissal of the entire action as to all defendants without prejudice, all parties to bear their own costs and fees. Plaintiffs cite Federal Rule of Civil Procedure 41(a)((1)(A)(i). Rule 41(a)(1)(A)(i) permits voluntary dismissal on the plaintiff's notice without a court order "before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). An action may be voluntarily dismissed after a motion to dismiss or for summary judgment has been filed and without a court order only upon stipulation signed by all parties who have appeared. See Fed. R. Civ. P. 41(a)(1)(A)(ii). Absent a stipulation, and after a motion to dismiss or for summary judgment has been filed, a court order is required. See Fed. R. Civ. P. 41(a)(2).

Here, Plaintiff's notice of voluntary dismissal, which is not signed by all parties who have appeared in the action, and which has been filed under Rule 41(a)(1)(A)(i), was filed on April 10, 2023. See ECF No. 31. Defendants filed motions to dismiss and to strike on March 8, 2023, and March 14, 2023. See ECF Nos. 6, 8, and 9. Because Plaintiffs' notice was filed after Defendants motions, it is ineffective under Rule 41(a)(1)(A)(i). The action may be dismissed without court order upon submission of a stipulation under Rule 41(a)(1)(A)(ii) signed by all

1 parties who have appeared in the action.

2 The Court next addresses Plaintiffs' motion for leave to amend. The Federal Rules
3 of Civil Procedure provide that a party may amend his or her pleading once as a matter of course
4 within 21 days of serving the pleading or, if the pleading is one to which a responsive pleading is
5 required, within 21 days after service of the responsive pleading, see Fed. R. Civ. P. 15(a)(1)(A),
6 or within 21 days after service of a motion under Rule 12(b), (e), or (f) of the rules, whichever
7 time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all other situations, a party's pleadings may
8 only be amended upon leave of court or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2).

9 Here, Defendants filed motions to dismiss under Rule 12(b) on March 8, 2023, and
10 March 14, 2023. See ECF Nos. 6 and 9. Plaintiff's motion for leave to amend, with a proposed
11 first amended complaint attached, was filed on March 29, 2023. See ECF No. 12. Because
12 Plaintiffs' motion was filed within 21 days of Defendants' motions to dismiss, leave of court is
13 not necessary to amend the original complaint. See Fed. R. Civ. P. 15(a)(1)(B). Plaintiffs'
14 motion for leave to amend will be denied as unnecessary. The Clerk of the Court will be directed
15 to file Plaintiffs' proposed first amended complaint as of March 29, 2023.

16 With the filing of Plaintiffs' first amended complaint, Defendants' motions
17 challenging the original complaint are rendered moot. The Clerk of the Court will be directed to
18 terminate Defendants' motions to dismiss and Defendant Berry's motion to strike as pending
19 motions. Defendants will be directed to respond to Plaintiffs' first amended complaint. Such
20 responses may include appropriate motions challenging the first amended complaint, or
21 Defendant may elect to answer.

22 Next, the Court addresses Plaintiffs' motion to remand and related motion to
23 amend their motion to remand. It appears that Plaintiffs' motions are premised on the argument
24 that, with amendment of the complaint to exclude any federal claims, remand will be appropriate.
25 See ECF Nos. 11 and 16. With the filing of Plaintiffs' first amended complaint as permitted
26 herein, the Court finds it appropriate to allow the parties an opportunity to meet and confer on the
27 issue of remand to state court in light of the specific claims raised in the first amended complaint.
28 In the meantime, Plaintiff's motions related to remand will be denied without prejudice to

1 renewal in conjunction with Defendants' response to the first amended complaint.

2 Finally, with the resolution of all pending motions, the hearings currently noticed
3 for April 19, 2023, and June 7, 2023, will be vacated.

4 Accordingly, IT IS HEREBY ORDERED as follows:

5 1. Plaintiffs' notice of voluntary dismissal under Federal Rule of Civil
6 Procedure 41(a)(1)(A)(i), ECF No. 31, is not accepted and this action is not dismissed on
7 Plaintiffs' notice.

8 2. Plaintiffs' motion for leave to amend, ECF No. 12, is denied as
9 unnecessary.

10 3. The Clerk of the Court is directed to file Plaintiffs' proposed first amended
11 complaint and Exhibits A through W, attached to ECF No. 12 at pages 71-260, as of March 29,
12 2023.

13 4. Defendants' motions challenging the original complaint, ECF Nos. 6, 8,
14 and 9, are moot and the Clerk of the Court is directed to terminate these matters as pending
15 motions.

16 5. Defendants shall file a response to Plaintiffs' first amended complaint
17 within 30 days of the date of this order.

18 6. Any renewed motion for remand shall be filed within 30 days of the date of
19 this order.

20 7. The hearings set for April 19, 2023, and June 7, 2023, before the
21 undersigned in Redding, California, are vacated.

22 8. Defendant Berry's request for remote appearance, ECF No. 30, is denied as
23 unnecessary.

24
25 Dated: April 14, 2023



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
28